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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)	P&S Docket No. D-04-0004
)	
Ferndale Foods, Inc., and)	
Margaret M. Kent,)	
)	
Respondents)	Consent Decision and Order

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter the "Act," by a Complaint and Notice of Hearing filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture alleging that Respondents willfully violated the Act. This Decision is entered pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted By the Secretary Under Various Statutes (7 C.F.R. § 1.138).

Respondents admit the jurisdictional allegations in Paragraph I of the Complaint and Notice of Hearing and specifically admit that the Secretary has jurisdiction in this matter; neither admit nor deny the remaining allegations; waive oral hearing and further procedure; and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this Decision and Order.

Complainant agrees to the entry of this Decision and Order.

Findings of Fact

1. Ferndale Foods, Inc., ("Ferndale Foods"), is a corporation organized and existing under the laws of the State of Nevada. Respondent Ferndale Foods conducted its business operations in the State of Washington, and its registered agent in the State of Washington is PTSGE Corp., 925 Fourth Ave., Ste. 2900, Seattle, WA 98104-1158.

2. At all times material herein, Respondent Ferndale Foods operated a slaughter and boning facility in the city of Ferndale, Washington and was:

(a) Engaged in the business of buying livestock in commerce for purposes of slaughter; and

(b) A packer within the meaning of and subject to the provisions of the Act.

3. On May 20, 2003, the United States Department of Agriculture ("USDA") placed a prohibition on the importation of live cattle and other ruminants from Canada to the United States due to the detection of bovine spongiform encephalopathy in Canada. See 68 FR 31939 (May 29, 2003). Respondent Ferndale Foods, whose facility was located near the US-Canadian border, represents that as a result of the border closing, it was unable to obtain sufficient quantities of cattle for slaughter and was unable to obtain the financing necessary to restart operations or to satisfy outstanding payment obligations to its cattle suppliers. Ultimately, the slaughter facility formerly operated by Respondent Ferndale Foods ceased all operations.

Conclusions

Having admitted the jurisdictional facts and the parties having agreed to the entry of this Decision, such Decision will be entered.

Order

Respondent Ferndale Foods, Inc., its agents and employees, directly or through any corporate or other device, in connection with its activities subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock; and
2. Failing to pay the full purchase price of livestock.

In accordance with section 203(b) of the Act, (7 U.S.C. § 193(b)), Respondent Ferndale Foods, Inc., is hereby assessed a civil penalty of eighteen thousand dollars (\$18,000). The assessed civil penalty shall be paid in accordance with the terms of the “Understanding Regarding Consent Decision and Order” (hereinafter the “Understanding”) entered between the parties.

Complainant’s case against Respondent Margaret Kent is hereby stayed subject to the terms of the Understanding entered into between Complainant and Respondents Margaret Kent and Ferndale Foods. *Provided* that if Respondent Ferndale Foods fulfills the terms of the parties’ Understanding, upon Complainant’s motion, an order dismissing the complaint against Respondent Margaret Kent shall be entered. *Further Provided* that if Respondent Ferndale Foods fails to satisfy the terms of the Understanding, upon application by Complainant to the Administrative Law Judge, a stipulated “Modified Consent Decision and Order,” which appears as “Exhibit B” to the parties’ Understanding,¹ shall be entered by the Administrative Law Judge.

¹ A copy of the parties’ Understanding and stipulated order were provided to the Administrative Law Judge for review purposes but have not been made part of the record of this proceeding and will not be made available for public inspection.

Respondents Margaret Kent and Ferndale Foods expressly waive any further appearance or procedure in this matter. The Administrative Law Judge will retain jurisdiction over this case pending a final motion by Complainant.

The provisions of this Order shall become effective on the sixth (6th) day after service of this Order on the Respondents.

Copies of this Decision and Order shall be served upon the parties.

FERNDALE FOODS, INC.
Respondent

By: _____

President
Title

MARGARET M. KENT
Respondent

CHARLES E. SPICKNALL
Attorney for Complainant

Issued in Washington D.C.

this 5 day of Oct, 2005

Jill S. Clifton

Jill S. Clifton
ADMINISTRATIVE LAW JUDGE